

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

OP.No. 35448 of 2001(T)

PETITIONER:

**SHAJI S.NAIR,
AGECD 40 , S/O. NAIR,
POTTKENETH KEDARAM HOUSE,
WARD NO.XXII/438 KAYAMKULAM.**

BY ADV. SRI.N.ANILKUMAR

RESPONDENTS:

- 1. STATE OF KERALA, REP.BY THE
PRINCIPAL SECRETARY VIGILANCE @ DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.**
- 3. THE DIRECTOR, VIGILANCE & ANTI CORRUPTION
BUREAU, THIRUVANANTHAPURAM 4.**
- 4. SUPERINTENDENT OF POLICE (INTELLEGENCE),
VIGILANCE DIRECTORATE, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 13 /08/2007 , THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP. NO.35448/2001

ORDER ON CMP. NO.57887/2001 IN OP. NO.35448/2001

DISMISSED

13.08.2007

SD/- V.GIRI, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE MEMO OF CHARGES NO.G2-2725/96 DT. 23.4.96 BY THE 4TH RESPONDENT.

EXT.P2:- COPY OF THE REPLY GIVEN TO THE MEMO OF CHARGES FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P3:- COPY OF THE ENQUIRY REPORT NO.G1-2725/96 DT. 31.3.97 OF THE 4TH RESPONDENT.

EXT.P4:- COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT NO.G1-2250/98 DT. 20.1.99.

EXT.P5:- COPY OF THE APPEAL FILED BY THE PETITIONER ON 30.12.99.

EXT.P6:- COPY OF THE ORDER NO.G.O(RT) NO.169/2000/VIG. DT. 3.7.01.

TRUE COPY/

P.A. TO JUDGE

tss

V.GIRI,J.

O.P. NO. 35448 of 2001

Dated this the 13th day of August, 2007

JUDGMENT

The petitioner, while working as a police constable in the office of the Deputy Superintendent of Police (Vigilance) Alappuzha, was issued Ext.P1 memo of charges dtd.23.4.1996. He submitted Ext.P2 reply to the same. His explanation was not found to be satisfactory by the disciplinary authority. An enquiry was conducted by the 4th respondent. Ext.P3 enquiry report dtd.31.3.1997 was followed by a notice of show cause issued by the disciplinary authority proposing imposition of a major penalty of dismissal from service. Explanation submitted by the petitioner to the same was not accepted. Ext.P4 order was issued confirming the factum of dismissal from service. Statutory appeal as Ext.P5 before the Government was partly allowed. By Ext.P6 order dtd.3.7.2001, the first respondent modified the order of dismissal from service to that of compulsory retirement. It is the order imposing penalty as modified by the Appellate Authority that is the subject matter of challenge in the original petition.

2. Ext.P1 memo of charges alleges that the petitioner while

working as a Police Constable in the office of the Deputy Superintendent of Police (Vigilance) Alappuzha, by misusing his official power, on 15.1.1996 at about 5 p.m. visited the house of one Thankachan residing at Kallumala unauthorisedly, and told Thankachan that there is a complaint with regard to the death of Thankachan's wife and son in Muscat. That he has come to make enquiry regarding such complaint, it is revealed that there was suspicion about Thankachan and that there was proposal for exhuming the bodies. It is alleged that Thankachan demanded to see the identity card of the petitioner and there upon the petitioner and Thankachan went to a nearby medical shop conducted by one Saji and the said Saji had affirmed that the petitioner is actually a police constable. There upon the petitioner had threatened Thankachan of difficulties that may arise in the case of a detailed enquiry, and a possible inability for Thankachan to return to Muscat. It is alleged that the petitioner demanded an amount of Rs.20,000/= from Thankachan to avoid the possibility of a case and that the petitioner had received an amount of Rs.20,000/= on the night of 16.1.1996. It is alleged that the aforementioned serious misconduct on the part of the petitioner warrants disciplinary action and imposition of an appropriate penalty.

3. Ext.P2 explanation submitted by the petitioner contains an admission on the part of the petitioner as regards he being acquainted

with Thankachan and Saji, who is a relative of Thankachan. The petitioner admits that he was aware of the trauma suffered by Thankachan and he had actually gone to his house to pay his condolence. He denied either demand of Rs.20,000/= or receipt of the same.

4. He further refers to a subsequent meeting with Thankachan in the presence of another relative of Thankachan, one Achankunju, who is also a police constable, wherein they had visited the petitioner at his residence and had requested him to help them to obtain a certificate as regards the mental status of the deceased wife of Thankachan from the Pushpagiri Medical College Hospital. Apparently this move was made by Thankachan and his relative police constable Achankunju, on the premise that the petitioner was related to the Deputy Superintendent of Police, Kottayam. The petitioner states that he had not undertaken to help them to obtain a certificate but had only stated that he will try to help them to do so. But the petitioner had not made any attempt for obtaining the certificate and this was the cause for animosity entertained by Achankunju the relative of Thankachan.

5. Ext.P3 is the report of the enquiry by the Superintendent of Police (Vigilance), Vigilance Directorate, Thiruvananthapuram the 4th respondent. In Ext.P3, the enquiry officer finds that it is not possible to come to a conclusion that the allegation regarding demand of bribe

and receipt of the same has been clearly proved. Nevertheless the report affirmed that the petitioner had met Thankachan unauthorisedly and that this was for the purpose of making some unlawful gain.

6. The enquiry report Ext.P3 seems to have been accepted by the disciplinary authority the second respondent. The notice of show cause proposing the penalty in question is not made part of the record. A reading of Ext.P4 would show that the enquiry report as such was accepted by the disciplinary authority. At any rate, there is nothing to show that the disciplinary authority had dissented from the findings of the enquiry officer. In Ext.P4 order, the disciplinary authority finds that part of memo of charges regarding the petitioner visiting Thankachan for the purposes other than what are legitimate stands proved, that therefore the petitioner deserves serious deterrent and punitive action as he was a member of the prime agency to combat corruption in the State. The conduct of the delinquent was found to be unbecoming of a member of the police force. As stated above, the imposition of punishment and the partial affirmation of the same by the Appellate Authority are under challenge. Ext.P1 memo of charges show that the principal charge that has been levelled against the petitioner related to demand of bribe and acceptance of the same. Of course, the charges also refer to a visit made by the petitioner to the house of Thankachan. The petitioner submitted an explanation for a

meeting with Thankachan wherein he said that on account of previous acquaintance with Thankachan who is a relative of Saji, he has gone to the house of Thankachan to offer his condolences. Subsequent meeting was also explained by him on the premise that a request was made by Thankachan in the presence of Achankunju, another police constable for enlisting the help of the petitioner to obtain a medical certificate from the Medical College Hospital, Pushpagiri.

7. I heard learned counsel for the petitioner Mr.Anil Kumar and the learned Senior Government Pleader on behalf of the respondents.

8. The enquiry officer finds that there is no acceptable material as regards the demand or acceptance of bribe as such. Nevertheless the Enquiry Officer says that part of the memo of charges regarding the petitioner visiting Thankachan for the purposes which are not legitimate stand proved as such. A perusal of Ext.P1 memo of charges shows that the principle allegation is regarding demand or acceptance of bribe. The enquiry officer finds that it is not possible to conclude that the said allegation has been proved completely. What seems to have been proved, as found by the Enquiry Officer, is an unauthorised visit made by the petitioner to Thankachan's house. The disciplinary authority seems to have accepted Ext.P3 enquiry report. The disciplinary authority is entitled to take a different view from that of the enquiry officer and arrive at a conclusion that the charges

levelled against the delinquent officer stands proved. If the disciplinary authority comes to such a conclusion that he must indicate the reasons which persuaded him is dissent from the enquiry report in whole or in part and give the delinquent official an opportunity to object to the proposal of the disciplinary authority to take a view different from that of the enquiry authority. This procedure is required to adhere to the principles of natural justice. The same does not seem to have been followed in the present case. The disciplinary authority is entitled to rely upon the materials gathered during the enquiry or even portions of the report of the enquiry officer, that are found to be acceptable but where the enquiry officer comes to the conclusion that the principle charge (it seems to be the only charge in the present case) does not seem to have been proved completely and the disciplinary authority does not agree with the enquiring authority in that regard, the former should give notice of such dissent, and give opportunity to the delinquent official to show cause. But unfortunately, that has not been done in the present case. I am constrained to hold that the order of punishment and the order passed by the appellate authority partly affirming the same are infirm.

8. In the result, Exts.P5 and P6 are set aside. The second respondent disciplinary authority is directed to take fresh steps from the stage of receipt of the enquiry report as contemplated by the rules.

He may issue a suitable notice to the petitioner proposing imposition of such penalty as is deemed appropriate by him. The petitioner shall be given reasonable opportunity of being heard against the proposed punishment and a fresh order of penalty may be imposed by the second respondent in accordance with law. I have not expressed any opinion with regard to the other contentions raised by the petitioner. The entire proceedings as indicated above will be finalised by the second respondent within a period of three months from the date of receipt of a copy of the judgment. I make it clear that I have not made any observation as regards the acceptability of Ext.P4 report.

Subject to the above, the writ petition is disposed of as above.

V.GIRI, JUDGE



W.P.(C)35448/2001

:8:

V.GIRI, J.

W.P.(C)35448/2001

JUDGMENT

13/8/2007

